

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

OCT 2 1975

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FILE: B-180095

DATE:

MATTER OF: Availability of appropriations for employees' union dues

DIGEST: Where union dues were not collected by Department of Labor pursuant to withholding agreement with union due to administrative error, Secretary must institute action to recover resulting overpayment of salary unless he waives such collection pursuant to 5 U.S.C. § 5584 (Supp III, 1973). Either the amounts collected or if waived, the equivalent sum should then be paid to the union. The agency may not use its appropriated funds to pay the employees' debt to the union without either collecting the amounts owed or waiving such collection.

This decision to the Secretary of Labor is in response to a request of the Assistant Secretary for Administration and Management, Department of Labor, by letter dated March 21, 1975, for our decision regarding the availability of appropriated funds to pay union dues which the Department erroneously failed to withhold from employees' salaries.

The Department of Labor and Department of Labor Lodge 12 of the American Federation of Government Employees, AFL-CIO, entered into an agreement on September 1, 1964, providing that the Department would withhold union dues from an employee's pay upon receipt of a voluntary allotment authorization (DL Form 1-181, August 1964) from the employee. The agreement provides in part that:

"Deductions will be made beginning with the first pay period which begins after the [authorization] form is received in the appropriate payroll office and be made in each subsequent pay period until terminated * * *."

The Assistant Secretary states that although deductions are usually made within the applicable period after receipt of the employee's voluntary authorization, occasionally they are inadvertently initiated one or two pay periods late. In mid-December, 1974, approximately 200 voluntary authorization forms for the withholding of union dues were received by the Department's payroll office. Because of the press of necessary end-of-year payroll office activities, the Department was unable to begin deductions for union dues based on the new authorizations for as many as three pay periods after receipt. Labor Lodge 12 opposes retroactive deductions of due from members' pay, and has filed a formal grievance with the Department requesting that the Department reimburse it for

dues not properly deducted, amounting to about \$600. In an oral statement of its views, Labor Lodge 12 explained that its objection to retroactive withholding was fear of employee resentment against the union for what was, after all, a management mistake. The Assistant Secretary asks whether funds appropriated to the Department may be used to satisfy Local 12's request.

The agreement to withhold dues from union members' salaries is specifically authorized by section 21 of Exec. Order No. 11491, 3 C.F.R. §§ 254, 265 (1974) and the Civil Service Regulations, 5 C.F.R. § 550.321 (1974). It is a valid contract, binding upon the Department of Labor, and in an appropriate case, the Department would be liable in money damages for its breach. National Maritime Union of America, AFL-CIO v. United States, No. 385-71 (Ct. Cl., Dec. 18, 1973).

The employees' voluntary allotment requests which were submitted to the Department authorize deduction of dues until a written revocation request is filed with the personnel office. Since the authorizations were in effect during the periods of time in question and during those periods the employees were entitled to all the benefits of union membership, the employees owe the union the amount of the dues for the pay periods in question. The dues should be retroactively withheld and paid to the union in fulfillment of the Department's obligation under its contract with the union. See 42 Comp. Gen. 282 (1962) and B-152851, January 9, 1964, in which an agency had failed to collect and pay over health insurance premiums; and B-160554, March 28, 1967 and B-174249, October 23, 1974, in which life insurance premiums were similarly not collected and paid, due to administrative error. In each instance, the employee was held to have been covered for the benefits in question, notwithstanding the failure to deduct the proper amounts from his salary and therefore subsequent collection of the premiums due was considered proper.

The payment of union dues is a personal obligation of the employee member and cannot be considered a debt of the United States. Therefore the agency may not pay the union the equivalent amount of the dues from its appropriated funds without either seeking to recover the amounts from the employees or exercising its power to waive collection from the employees, as discussed below.

When the agency is required to act as a collection agent, as in this case, and fails to make the required deductions, the result is an overpayment of pay which must be recovered from the employee. However, under certain circumstances 5 U.S.C. § 5534 (Supp. III, 1973) provides that collection from the employee may be waived either by the Comptroller General or, as in the instant case, when the claim is for an amount aggregating less than \$500, by the head of the agency involved.

The standards for waiver of claims arising out of an erroneous payment of pay are found in 4 Code of Federal Regulations 91-93. Section 91.5(c) provides for waiver where:

"Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim Waiver of overpayments of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case. . . ."

Applying these criteria to cases involving the administrative failure to make appropriate deductions for life or health insurance, we have permitted waiver in some cases where it seemed inequitable to impute constructive knowledge of the overpayment and denied it in others where the employee was found to be partially at fault in not bringing the failure to deduct his premiums to administrative attention. See B-176231, September 5, 1972 (denial sustained on reconsideration, February 23, 1973); B-180137, December 28, 1973; B-183113, March 31, 1975 (denial sustained on reconsideration, July 21, 1975).

While there have been no previous cases to date which considered the waiver of the collection of union dues on the same basis as life or health insurance premiums, there appears to be no reason why the language of the statute and regulations should not be equally applicable. Therefore, if the Secretary makes the necessary findings under 5 U.S.C. § 5584 (Supp. III, 1973) and the implementing regulations, he may waive collection of the erroneous overpayments of salary to these employees for whom there should have been deductions for union dues.

Since subsection (c) of section 5584, supra., provides that "an erroneous payment, the collection of which is waived under this section is deemed a valid payment for all purposes," if waiver is granted, the Secretary must consider that the deductions have been made and must turn over the proceeds to the union as required by his agreement.

R.F.KELLER

Deputy

Comptroller General
of the United States